



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

SMC  
Docket No: 06430-99  
28 February 2000

SGT [REDACTED] USMC  
[REDACTED]  
[REDACTED]

Dear Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has directed filing in your naval record the final disposition of the civil matter in question.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 13 October 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice: "In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Further, the Board found the evidence you provided did not establish you were improperly removed from the 1996 staff sergeant selection list. Therefore, they were unable to find you should have been promoted pursuant to your 1996 selection. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

0430-99

IN REPLY REFER TO:  
1610  
MMER/PERB  
OCT 13 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED]'s DD Form 149 of 15 Jun 99  
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 6 October 1999 to consider Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 970301 to 980228 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner provides documentation indicating that the Municipal Court of California, County of San Diego, North County Judicial District has set aside the verdict of "guilty" and allowed him to enter a plea of "not guilty." The Court honored the plea of "not guilty" and dismissed all accusations.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The portion of the document from the Municipal Court of California entitled "Probation Ended: Petition for Relief Under P.C. 1203.4" revealed that the petitioner was convicted on 20 May 1997 of offenses to which he previously entered a plea of "no contest." We also note that in his letter of 21 April 1997, the petitioner's Commanding Officer [REDACTED] described the offenses as "... two misdemeanors: Petty Theft and Battery." That the petitioner successfully fulfilled the terms of his probation does not erase the fact that he was convicted and sentenced. We also stress that the Federal government is not bound to accept the actions of a state relative to the recording of documented matters of fact. The bottom line is that the petitioner was clearly charged, convicted, and sentenced by civil authorities. The reporting officials, per the spirit and intent of reference (b), duly reported those actions in the challenged fitness report.

6430-99

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
SERGEANT [REDACTED] IN [REDACTED] USMC

b. In all fairness to the petitioner, the Board is requesting that the California court's final disposition of his case be included in his official military personnel file. This action is in complete accord with the provisions of paragraph 7009 of reference (b) and Section 1000 and Table 1-2 of the Marine Corps Individual Records Administration Manual (MCO P1070.12J).

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Sergeant [REDACTED]'s official military record.

5. The case is forwarded for final action.

[REDACTED]  
Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps